

Tor Ahjem
Office of Communications
Riverside House
2a Southwark Bridge Road
LONDON
SE1 9HA

8th June 2016

By e-mail

Dear Tor,

Reference: CW/0117/03/16

Dispute relating to TelNG's compliance with General Condition 17.21 and the National Telephone Numbering Plan (the "Dispute")

Non CONFIDENTIAL

Confidentiality

This submission is submitted on the basis of "name withheld" in the first instance [REDACTED]

[REDACTED]

Provisional Conclusions

[REDACTED] notes the publication of the Provisional Conclusions to the Dispute on 1st June 2016. Our submissions to the publication of the Dispute in April made specific reference to a number of potential scenarios as a result of the information asymmetry between [REDACTED], the Office of Communications ("Ofcom") and the parties to the Dispute. These were outlined in the opening two paragraphs of our submissions. Whilst it is clear that the service operated by TelNG Limited is not quite the "hook, line and sinker" type involving leaving the phone "off the hook" to accrue credit that would have meant our submissions would have been, as we said in making then, academic, it is clear that the TelNG "UK03" service is close to it in the shades of grey arising from trying to give practical effect to General Condition of Entitlement 17.21. Ofcom has exercised its discretion following an analysis and the weighing of the arguments of the parties to

reach a conclusion on the implementation of the relevant legal instrument in relation to a specific 03 service.

To that end, as should be evident from the submissions we made previously, we consider that footnote 26 is a pivotal component of the Provisional Conclusions and must remain in any final determination. In fact, its criticality is such that it would be better if it were made explicitly clear in the executive summary. In support of this, I have already fielded a number of enquiries from concerned smaller operators, [REDACTED] [REDACTED] about the precedent and I can attest to how concerned they are about any unintended consequences for what they consider, and I agree prima facie, are lawful services.

Finally, [REDACTED] notes that General Condition of Entitlement 20, as transcribed from Article 28 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (as amended) imposed (paraphrasing) an end-to-end connectivity obligation on H3G. 1(c) of the Provisional Declaration in Annex 3 released H3G from any obligation to originate calls to the TelNG "UK03" service, but does not make it clear this obligation is lifted (insofar as, I assume, Ofcom have determined it is not "economically feasible" in the language of the aforementioned condition to originate calls to the service). [REDACTED] would recommend that this is made explicitly clear (noting too its absence from the relevant section explaining the legal background) for the avoidance of any future doubt or any unintended precedent setting. In other words, Ofcom's power in Section 190(2) of the Communications Act 2003 is being exercised to make a declaration setting out the right of H3G to not originate calls, without dealing with explicit obligation it has to do so elsewhere.

As ever, we are at your disposal to answer any questions arising. My contact details are appended to the covering e-mail to this submission.

Yours sincerely,

[REDACTED]

[REDACTED]